

Effective 5/13/2014

77-40-107 Petition for expungement -- Prosecutorial responsibility -- Hearing -- Standard of proof -- Exception.

- (1) The petitioner shall file a petition for expungement and the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.
- (2)
 - (a) Upon receipt of a petition for expungement of a conviction, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.
 - (b) The notice shall include a copy of the petition, certificate of eligibility, statutes and rules applicable to the petition, state that the victim has a right to object to the expungement, and provide instructions for registering an objection with the court.
- (3) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 30 days after receipt of the petition.
- (4)
 - (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.
 - (b) If requested, the response prepared by Adult Probation and Parole shall include:
 - (i) the reasons probation was terminated; and
 - (ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.
 - (c) A copy of the response shall be provided to the petitioner and the prosecuting attorney.
- (5) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by Adult Probation and Parole within 15 days after receipt.
- (6)
 - (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.
 - (b) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.
 - (c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.
- (7) If no objection is received within 60 days from the date the petition for expungement was filed with the court, the expungement may be granted without a hearing.
- (8) The court shall issue an order of expungement if it finds by clear and convincing evidence that:
 - (a) the petition and certificate of eligibility are sufficient;
 - (b) the statutory requirements have been met;
 - (c) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105(5), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction; and
 - (d) it is not contrary to the interests of the public to grant the expungement.
- (9) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Amended by Chapter 263, 2014 General Session